Nada Smith

the dealership would usually sign?

A. I believe so, yes.

Q. Do you recognize either signature at the bottom of the document?

A. I believe that's Julio's.

MR. SIMON: Pointing to the middle bottom.

MR. LANE: The witness is pointing to a signature at the middle bottom of Exhibit 5.

Q. So that looks like Julio Estrada's signature to you?

A. I think so, yes.

MR. LANE: I'm going to show you another document. We will mark it as Exhibit 6.

(One-page document entitled "Guarantee of Title" is marked as Plaintiff's Exhibit 6 for identification, as of this date.)

Q. I'm going to put Exhibit 6 in front of you. Do you recognize that document?

A. Yes.

Q. What is that?

Nada Smith

A. Guarantee of title. I'm not sure what it's for, but I recognize the paper.

Q. You recognize it as a document that was usually a part of --

A. A deal.

Q. -- deal folder?

Now that it's back in front of you, is that a document that the finance manager would usually sign?

A. Yes.

Q. Do you recognize the signature in the bottom half of the document?

A. Yes.

Q. Whose signature is that?

A. Julio's.

Q. Would you say that the signature on Exhibit 6 and the signature that you identified in Exhibit 5 look completely different?

A. Yeah. I think that's Julio's. He usually signs all the paperwork, so I think it is his.

Q. What do you know about the relationship between New York Motor Group and

Planet Motor Cars?

A. I don't know any relationship.

MR. SIMON: You have to say it louder.

THE WITNESS: Sorry.

A. I don't know the relationship.

Q. Did you ever notice if documents created at New York Motor Group were going out --

MR. LANE: I'm sorry, strike that.

Q. Did you ever notice if documents created at New York Motor Group indicated that Planet Motor Cars was the seller of the vehicle?

A. Honestly, I never noticed.

Q. Did you ever sign transaction documents?

A. Some bank documents like this, that needed to be to sent -- like Exhibit 6.

Q. You would sometimes sign documents like Exhibit 6?

A. Yes, that belonged to the bank. And I would just sign it sometimes. It happened a couple of times that I would sign

Nada Smith

it, and I would put my name.

Q. When you would sign those documents, would you indicate your title or position?

A. No, I just left it blank. I think I left it blank. I don't remember them, but I remember signing them.

Q. Did you ever just sign your name to blank documents that had nothing else written on them?

A. I don't remember. I don't think so.

Q. Did you ever complete documents for a customer after they had already bought the car and left the dealership?

A. No.

Q. Did you ever sign documents and indicate that Planet Motor Cars was the seller of the vehicle?

A. No.

MR. LANE: I'm going to have this exhibit marked as Plaintiff's Exhibit 7.

(One-page document entitled "New York State Department of Motor Vehicles,

Nada Smith

Odometer and Damage Disclosure Statement" is marked as Plaintiff's Exhibit 7 for identification, as of this date.)

Q. Did you ever see "Planet Motor Cars" listed on any paperwork?

A. Yes.

Q. When?

A. On DMV paperwork.

Q. Why would "Planet Motors" be on DMV paperwork?

A. I never questioned that.

Q. Who would write that information onto DMV documents?

A. I did.

Q. Why would you write that information on DMV documents?

A. Because Julio told me to.

Q. Do you recognize Exhibit 6?

A. Mm-hmm.

Q. I'm sorry, Exhibit 7. What is that?

A. Odometer and Damage Disclosure Statement.

Nada Smith

Q. Would you often sign Odometer and Damage Disclosure Statements?

A. Yes.

Q. Would you always sign them?

A. No.

Q. Who else would sign them?

A. Julio.

Q. Why would you sign them?

A. Because I was filling out DMV paperwork.

Q. Why would you sometimes fill out DMV paperwork?

A. Because I would.

MR. GROSSMAN: I didn't hear the answer.

THE WITNESS: Because I would.

Q. Did anyone direct you to fill out DMV paperwork?

MR. SIMON: Note my objection to the form of the question -- the phrase "DMV paperwork." Could you be more specific, counselor?

MR. LANE: Sure.

Q. Were you ever told by someone to

fill out Odometer and Damage Disclosure Statements?

A. Yes.

Q. By who?

A. Julio.

Q. Did your father ever tell you to fill out Odometer and Damage Disclosure Statements?

A. No.

Q. Were you ever told to fill out any other documents in a transaction?

A. Sometimes. I don't remember what exactly.

Q. When you completed the document, would you sign it?

A. I would follow up with Julio and he would instruct me to sign it.

Q. Would you ever complete a document and not sign it?

A. I would have -- I don't remember, honestly.

Q. You're looking at Exhibit 7?

A. Yes.

Q. Did you fill out Exhibit 7?

Nada Smith

A. Yes.

Q. I'm going to go line by line on this, because I'm curious. Looking in the box at the bottom, at the top left-hand corner of the box it states "Vehicle Year." I'm going to go left to right. Just tell me if that's your handwriting in the box.

"Vehicle Year"; is that your handwriting?

A. Yes.

Q. The "Make"; is that your handwriting?

A. Yes.

Q. The "Model"; is that your handwriting?

A. Yes.

Q. "Body Type"?

A. Yes.

Q. "Vehicle Identification Number"?

A. Yes.

Q. Is that your signature at "Seller's Signature"?

A. Yes.

Q. Is that your handwriting at

Nada Smith

"Seller's Name"?

A. No, it doesn't look like it -- well, probably, yeah.

Q. So you wrote in "Planet Motor Cars"?

A. I believe so. I mean, I've filled out a few of these, and what I'm told to fill out, that's what I fill out. If it wasn't me, it was Julio.

Q. Did you write the address on the next line down?

A. Yes.

Q. Did you put in the information for the new owner, including her name, her mailing address, and city and state that's all listed there?

A. Yes. The dates, that's not my handwriting.

Q. Okay.

A. And neither is the town. The city and town -- Jamaica -- that's not my handwriting.

Q. All right.

A. The more I look at it, the name of

Nada Smith

the dealership, that's my handwriting.

Q. I'm sorry?

A. The more I look at it.

Q. The name of the dealership?

A. Yes.

Q. That's your handwriting?

A. Yeah.

Q. Would you ever change a document after the sale of the car?

A. No.

Q. Did anybody ever instruct you to change information on a document?

A. I don't remember.

MR. LANE: Can we go off the record for five minutes? I just want to talk with Mr. Tuhin's counsel, and then we'll come right back on the record and figure out what we're going to do. Just give me five minutes.

MR. GROSSMAN: Sure.

(A discussion is held off the record.)

oOo

MR. LANE: We're back on the

record. For the moment I believe I'm done with questions on behalf of my five clients.

Why don't we break for lunch and then Mr. Keshavarz is going to have some follow-up questions on behalf of his client, Plaintiff Tuhin. So we'll take a half-hour lunch break.

(Luncheon recess is taken from 1:18 to 2:06 p.m.)

oOo
AFTERNOON SESSION
oOo

EXAMINATION BY MR. KESHAVARZ:

Q. Good afternoon. My name is Ahmad Keshavarz. I'm one of the attorneys for Mr. Tuhin, one of the plaintiffs in this case. I missed the very beginning part of the deposition.

How do you like to be addressed? I know you got married.

A. Yes. "Mrs. Smith."

Q. Mrs. Smith, thank you.

I will just follow up on a few

questions by opposing counsel. Let's talk about the money that you made while you worked at New York Motor Group.

Actually, let's first talk about the deposits at the bank. If I understood correctly, if New York Motor Group would get cash deposits, you would put that in a locked bag at the dealership; correct?

A. I kept it in a drawer until it was time to go and make the deposit. But I went as soon as I can.

Q. So how was the cash secured?

A. It was locked.

Q. In a drawer?

A. Yes.

Q. Were you the only one who made cash deposits?

A. Yes.

Q. What banks did you make the cash deposits at?

A. Chase and TD.

Q. Did New York Motor Group have any accounts anywhere other than Chase or TD Bank --

A. No.

Q. -- at any time that you worked there?

A. No.

Q. Which of the two banks would you make deposits at? Chase or TD?

A. It depends. Either/or.

Q. Go ahead.

A. Just to keep the balances up, you know.

Q. When you say "It depends" and "To keep the balances up," what do you mean?

A. Whichever bank needed it, the deposits. You know, I would check the balance and whichever bank needed the deposit, I would go deposit it.

Q. Whose name were the accounts under at Chase and TD?

A. New York Motor Group.

Q. The corporation?

A. Yes.

Q. Was there only one account at Chase and only one account at TD Bank?

A. Yes.

Nada Smith

Q. Were there any other accounts that New York Motor Group used, other than those two accounts -- one at Chase and one at TD Bank?

A. No. It was an LLC. It wasn't a corporation, sorry.

Q. You've been going to law school.

MR. SIMON: You have to keep your voice up so everybody can hear. Can you read back that last answer, because I couldn't hear it, and I'm sitting right next to you.

(The record is read back by the reporter.)

Q. Would all of the payments made on behalf of New York Motor Group come out of those two accounts -- the one at Chase and one at TD Bank?

A. Yes.

Q. Would they come out of any other source other than the one account at Chase and the one account at TD Bank?

A. No.

Q. Do you know what a floor planner is?

Nada Smith

A. Yes.

Q. What is a floor planner?

A. If I'm not mistaken, it's a company that provides vehicles for a dealership.

Q. And New York Motor Group used a floor planner?

A. Yes.

Q. Were most of the cars at New York Motor Group floor-planned?

A. Yes.

Q. Were all the cars at New York Motor Group floor-planned?

A. If they weren't trade-ins, they were floor-planned.

Q. Who were the floor planners that New York Motor Group used?

A. We had a few. We had -- I'm trying to think of the name. Hold on. I know one of them was Palisades. The others --

Q. Take your time.

A. Sorry -- Next Gear, there we go.

MR. SIMON: I didn't hear that. Could you say that again?

Nada Smith

Q. Was it "Next Gear"?

A. Yes. It was Next Gear.

MR. SIMON: Max Gear?

THE WITNESS: Next Gear.

Q. Did New York Motor Group use any other floor planners other than Palisades and Next Gear?

A. Not that I remember. I don't think so.

Q. I'm sorry, I asked you this a minute ago and then I got turned around when I nailed down the names of the floor planners. Tell me again what a floor planner is?

A. I'm not sure if this is the right definition for it, but to my acknowledgment it's a company providing a dealership with vehicles to floor-plan.

Q. They have a lien on the vehicles?

A. No, they don't have a lien on the vehicles. We make payments for the vehicle until we pay the vehicle off, and if the car is sold we pay the vehicle completely off.

Q. So the floor planner gets paid by checks from New York Motor Group?

Nada Smith

A. No. It was -- they had the bank information and we would get, you know, notified that this payment is coming out this time. And we would be aware of it.

Q. So there would be electronic transfers?

A. Yes.

Q. Would those electronic transfers to the floor planners all come out of those two accounts? One at Chase and --

A. Either/or, yeah.

Q. You did what most human beings would do; you anticipated the rest of my question.

A. I'm sorry.

Q. Don't be sorry. You have never been deposed before; right?

A. No.

Q. We do this for a living, so don't be sorry. So the record is clear, try to wait until I finish asking the question before you answer, even if you expect that you understand the rest of the question.

A. Okay.

Nada Smith

Q. Because the court reporter is taking notes.

A. Okay.

Q. And the other thing is, it's also common to nod your head or shake your head or say "mm-hmm" to answer a question. But because she's taking notes, it's important for you to verbalize your answers. Say "Yes" or "No."

A. Okay.

Q. So the floor planners would get paid by automatic direct withdrawals from the Chase and TD Bank accounts?

A. Yes.

Q. And they would make deposits automatically to those accounts?

A. I would make the deposits to the accounts. They don't make deposits to the account. The floor planner withdrew the payments, and whenever the vehicle was sold, I would select -- it was all on the computer.

Q. Yes.

A. When it was sold, I would select the vehicle and completely pay off the vehicle, and they would withdraw it then -- either the

Nada Smith

next day, or whatever day that was selected.

Q. When you say "electronically," what do you mean?

A. They had the bank information, so it -- it withdrew.

Q. Did you have some sort of electronic interface with the floor planners?

A. I don't know what you mean by that.

Q. When you said you would go online and it was withdrawn, I guess I wasn't clear what you meant by that.

A. They had -- the account information was inputted in their system. So whenever the payments came up, they notified us, withdrew the money.

Q. Thank you.

The deposits into the New York Motor Group account at Chase and TD Bank -- one source of the deposits would be the cash deposits that you would make; correct?

A. Either cash or check, or however the client put the downpayment.

Q. So you would be the one who would

make the deposits for all downpayments to New York Motor Group regardless of whether it was by cash or check; correct?

A. Correct.

Q. No one else would do that?

A. No.

Q. Who had the authority to write checks -- or withdraw electronically, I guess -- from the New York Motor Group accounts at Chase and TD Bank?

A. My father and I.

Q. Anyone else?

A. No.

Q. Did you have to have permission from your father before you had the ability to write a check?

A. Oh, yes, of course.

Q. Are you an authorized signator on those accounts?

A. Yes.

Q. By the "ability," I meant that your father didn't have to countersign checks; did he?

A. No. I had to call him and let him

Nada Smith

know.

Q. Let him know what?

A. That I was either going to write a check, or whatever was coming in and out of the accounts.

Q. What were the major checks that you would be writing from the accounts?

A. Just payments for our services. Like little small bills, like our internet bill and stuff like that. And our guy that goes to DMV, for our paperwork and stuff like that.

Q. Would you write any other types of checks from those accounts?

A. Just refunds. If they came in to return their vehicle, and they came in before the vehicle was funded or anything like that.

I mean it was like, you know, their five-day-prior period or whatever it is they came in. Or if they decided not to buy the vehicle and they put, like, a hundred dollars or whatever to hold the vehicle -- "Oh, I need the refund" -- and we'd write them a check.

Q. Other than refunds and the small

bills -- the internet bills and so forth -- were there any other reasons that you would write checks out on behalf of New York Motor Group?

A. No.

Q. Never wrote any checks to finance companies or floor planners yourself?

A. Floor planners? No. Like I said, it was electronic, yeah.

Q. Would you write checks to other dealerships, for example?

A. No.

Q. Would you write checks to pay off liens on trade-in vehicles?

A. Yes.

Q. You would do that on a pretty regular basis, I take it?

A. Whenever a customer traded-in a vehicle, yes.

Q. Particularly when a customer traded-in a vehicle, there was a lien that needed to be paid off?

A. Yes. And I would pay it off.

Q. Did you have to call your father

and get approval every time a lien got paid off?

A. Yes.

Q. So was you father at the dealership, generally speaking, when you had to get approval to pay off liens?

A. No. I would have to call him and give him the information and he would okay it.

Q. Would he not generally be at the dealership?

A. No.

Q. By "the dealership," I mean New York Motor Group.

A. Yes.

Q. So, no -- he would not generally be at New York Motor Group?

A. No, he wouldn't.

Q. That one was not your fault; that was all my fault. That was a badly asked question, sorry.

So when you worked at New York Motor Group, where was your father physically, if he was not there generally? Where was he physically? Was he at another dealership or